

AGREEMENT

BETWEEN
THE GOVERNMENT OF CANADA
AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
(reverse order of governments in U.S. original)

FOR COOPERATION IN THE EXAMINATION OF REFUGEE STATUS CLAIMS
FROM NATIONALS OF THIRD COUNTRIES

The Government of Canada and the Government of the
United States of America (reverse order in U.S. original)
(hereinafter referred to as the Parties)

CONSIDERING that Canada is a party to the 1951 Convention relating to the Status of Refugees, done at Geneva, July 28, 1951 (the "Convention"), and the Protocol Relating to the Status of Refugees, done at New York, January 31, 1967 (the "Protocol"), that the United States is a party to the Protocol, and reaffirming their obligation to provide protection for refugees on their territory in accordance with these instruments;

ACKNOWLEDGING in particular the international legal obligations of the Parties under the principle of non-refoulement set forth in the Convention and Protocol, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (the "Torture Convention") and reaffirming their mutual obligations to promote and protect human rights and fundamental freedoms.

RECOGNIZING and respecting the obligations of each Party under its immigration laws and policies;

EMPHASIZING that the United States and Canada offer generous systems of refugee protection, recalling both countries' traditions of assistance to refugees and displaced persons abroad, consistent with the principles of international solidarity that underpin the international refugee protection system, and committed to the notion that cooperation and burden-sharing with respect to refugee status claimants can be enhanced;

DESIRING to uphold asylum as an indispensable instrument of the international protection of refugees, and resolved to

strengthen the integrity of that institution and the public support on which it depends;

NOTING that refugee status claimants may arrive at the Canadian or United States land border directly from the other Party's territory where they could have found effective protection;

CONVINCED, in keeping with advice from the United Nations High Commissioner for Refugees (UNHCR) and its Executive Committee, that agreements among states may enhance the international protection of refugees by promoting the orderly handling of asylum applications by the responsible party and the principle of burden-sharing;

AWARE that such sharing of responsibility must ensure in practice that persons in need of international protection are identified and that the possibility of indirect breaches of the fundamental principle of non-refoulement are avoided, and therefore determined to safeguard for each refugee status claimant eligible to pursue a refugee status claim who comes within their jurisdiction, access to a full and fair refugee status determination procedure as a means to guarantee that the protections of the Convention, the Protocol, and the Torture Convention are effectively afforded;

Have agreed as follows:

Article 1

1. In this Agreement,

A) "**Country of Last Presence**" means that country, being either Canada or the United States, in which the refugee claimant was physically present immediately prior to making a refugee status claim at a land border port of entry.

B) "**Family Member**" means the spouse, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews.

C) "**Refugee Status Claim**" means a request from a person to the government of either Party for protection consistent with the Convention or the

Protocol, the Torture Convention, or other protection grounds in accordance with the respective laws of each Party.

D) **"Refugee Status Claimant"** means any person who makes a refugee status claim in the territory of one of the Parties.

E) **"Refugee Status Determination System"** means the sum of laws and administrative and judicial practices employed by each Party's national government for the purpose of adjudicating refugees status claims.

F) **"Unaccompanied Minor"** means an unmarried refugee status claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian in either Canada or the United States.

2. Each Party shall apply this Agreement in respect of family members and unaccompanied minors consistent with its national law.

Article 2

This Agreement does not apply to refugee status claimants who are citizens of Canada or the United States or who, not having a country of nationality, are habitual residents of Canada or the United States.

Article 3

1. In order to ensure that refugee status claimants have access to a refugee status determination system, the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of Article 4 to another country until an adjudication of the person's refugee status claim has been made.

2. The Parties shall not remove a refugee status claimant returned to the country of last presence under the terms of this Agreement to another country pursuant to any other safe third country agreement or regulatory designation.

Article 4

1. Subject to paragraphs 2 and 3, the Party of the country of last presence shall examine, in accordance with its refugee status determination system, the refugee status claim of any person who arrives at a land border port of entry on or after the effective date of this Agreement and makes a refugee status claim.

2. Responsibility for determining the refugee status claim of any person referred to in paragraph 1 shall rest with the Party of the receiving country, and not the Party of the country of last presence, where the receiving Party determines that the person:

- a) Has in the territory of the receiving Party at least one family member who has had a refugee status claim granted or has been granted lawful status, other than as a visitor, in the receiving Party's territory; or
- b) Has in the territory of the receiving Party at least one family member who is at least 18 years of age and is not ineligible to pursue a refugee status claim in the receiving Party's refugee status determination system and has such a claim pending; or
- c) Is an unaccompanied minor; or
- d) Arrived in the territory of the receiving Party:
 - (i) With a validly issued visa or other valid admission document, other than for transit, issued by the receiving Party; or
 - (ii) Not being required to obtain a visa by only the receiving Party.

3. The Party of the country of last presence shall not be required to accept the return of a refugee status claimant until a final determination with respect to this Agreement is made by the receiving Party.

4. Neither Party shall reconsider any decision that an individual qualifies for an exception under articles 4 and 6 of this Agreement.

Article 5

In cases involving the removal of a person by one Party in transit through the territory of the other Party, the Parties agree as follows:

- (a) Any person being removed from Canada in transit through the United States, who makes a refugee status claim in the United States, shall be returned to Canada to have the refugee status claim examined by and in accordance with the refugee status determination system of Canada.
- (b) Any person being removed from the United States in transit through Canada, who makes a refugee status claim in Canada, and:
 - (i) whose refugee status claim has been rejected by the United States, shall be permitted onward movement to the country to which the person is being removed; or
 - (ii) who has not had a refugee status claim determined by the United States, shall be returned to the United States to have the refugee status claim examined by and in accordance with the refugee status determination system of the United States.

Article 6

Notwithstanding any provision of this Agreement, either Party may at its own discretion examine any refugee status claim made to that Party where it determines that it is in its public interest to do so.

Article 7

The Parties may:

- a) Exchange such information as may be necessary for the effective implementation of this Agreement subject to national laws and regulations. This information shall not be disclosed by the Party of the receiving country except in accordance with its national laws and regulations. The Parties shall seek to ensure that information is not exchanged or disclosed in such a way as to place refugee status claimants or their families at risk in their countries of origin.
- b) Exchange on a regular basis information on the laws, regulations and practices relating to their respective refugee status determination system.

Article 8

1. The Parties shall develop standard operating procedures to assist with the implementation of this Agreement. These procedures shall include provisions for notification, to the country of last presence, in advance of the return of any refugee status claimant pursuant to this Agreement.
2. These procedures shall include mechanisms for resolving differences respecting the interpretation and implementation of the terms of this Agreement. Issues which cannot be resolved through these mechanisms shall be settled through diplomatic channels.
3. The Parties agree to review this Agreement and its implementation. The first review shall take place not later than 12 months from the date of entry into force and shall be jointly conducted by representatives of each Party. The Parties shall invite the UNHCR to participate in this review. The Parties shall cooperate with UNHCR in the monitoring of this Agreement and seek input from non-governmental organizations.

Article 9

Both Parties shall, upon request, endeavor to assist the other in the resettlement of persons determined to require protection in appropriate circumstances.

Article 10

1. This Agreement shall enter into force upon an exchange of notes between the Parties indicating that each has completed the necessary domestic legal procedures for bringing the Agreement into force.

2. Either Party may terminate this Agreement upon six months written notice to the other Party.

3. Either Party may, upon written notice to the other Party, suspend for a period of up to three months application of this Agreement. Such suspension may be renewed for additional periods of up to three months. Either Party may, with the agreement of the other Party, suspend any part of this Agreement.

4. The Parties may agree on any modification of or addition to this Agreement in writing. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done at _____, this _____ day of _____, 200z, in duplicate in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF
CANADA:

FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA:

(reverse order in U.S. original)